

DPS-149

March 3, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 05-1136

IN RE: LUTHER QUALLS, Petitioner

mc 05-78

Present: ROTH, BARRY AND SMITH, CIRCUIT JUDGES

Submitted are:

- (1) Petitioner's application pursuant to 28 U.S.C. § 2244 for permission to file a second or successive habeas corpus petition; and
- (2) Response thereto

in the above-captioned case.

Respectfully,

Clerk

MMW/JDM/lld

ORDER

The foregoing application to file a second or successive 28 U.S.C. § 2254 habeas corpus petition is denied. On September 29, 2004, the United States District Court for the District of Delaware denied Luther Qualls' 28 U.S.C. § 2254 petition for a writ of habeas corpus, holding that his claims were procedurally defaulted. Qualls did not appeal that decision to this Court. Instead, he filed the present application for permission to file another § 2254 petition. His application, however, is nothing more than a request for a certificate of appealability to seek review of the denial of his first § 2254 petition. A § 2244 application is not an alternative to an appeal. Moreover, as the State notes, Qualls' § 2244 application cannot be treated as a notice of appeal from the denial of his § 2254 petition because it would be untimely as a notice of appeal. Finally, to the extent that Qualls seeks permission to file another § 2254 petition so that he can raise the same claims from his first § 2254 petition, that request must be denied. See 28 U.S.C. § 2244(b)(1).

By the Court,


/s/ D. Brooks Smith

Circuit Judge

Dated: April 14, 2005

CRG/cc: LQ, LCM

A True Copy:


Marcia M. Waldron,
Clerk

FILED
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DISTRICT OF DELAWARE
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